

South Portland City Council
Position Paper of the City Manager

Subject:

ORDINANCE #10-13/14 - Amending Chapter 27, "Zoning Ordinance," regarding extension of moratorium on development proposals involving the loading of oil sands/tar sands products onto marine tank vessels docking in South Portland for an additional 180-day period. Passed first reading on 3/17/14. ROLL CALL VOTE. Passage requires five (5) majority votes.

Position:

On December 16, 2013, the City Council enacted Ordinance #2-13/14 establishing a moratorium on development proposals involving the loading of oil sands/tar sands products onto marine tank vessels docking in South Portland. The moratorium is in effect until May 5, 2014. Ordinance #2-13/14 had a retroactive date of November 6, 2013.

A moratorium is a temporary ban on land use activity or development to give City officials time and the opportunity to plan for accommodating or managing development. Development moratoria are specifically authorized by State statute, 30-A M.R.S.A. § 4356, subject to certain substantive and procedural requirements set forth in the statute.

The purpose of the moratorium is to enable the City and its Draft Ordinance Committee time to study its own ordinances to determine the implications of future proposed development proposals involving the loading of oil sands/tar sands products onto marine tank vessels docking in South Portland and to draft an amendment or amendments to the South Portland Code of Ordinances to address the concerns identified in Sec. 27-1601 of the moratorium ordinance. Recall that term "oil sands/tar sands products" is a defined term in the moratorium ordinance, and it means petroleum products derived from oil sands/tar sands that are still in an unrefined state, including bitumen, diluted bitumen, synthetic crude, synbit and dilsynbit. The term "oil sands/tar sands products" does not include refined products, such as gasoline, heating oil or diesel fuel, even if derived from bitumen.

State statute specifically allows the City Council to extend the moratorium so long as it finds that (i) the problem giving rise to the need for the moratorium still exists; and (ii) reasonable progress is being made to alleviate the problem giving rise to the need for the moratorium. See 30-A M.R.S.A. § 4356(2).

The Draft Ordinance Committee members were appointed on January 22, 2014, and the Committee has been meeting regularly since that date.

Because the proposed moratorium extension ordinance involves a temporary ban on certain land use activities, the Planning Board conducted a public hearing on April 8, 2014. By a vote of 4-0 (Giles, Schreiber absent, District At-Large vacant) recommended approval of the extension. Attached is a copy of the Planning Board report.

The moratorium extension would be effective for 180 days from May 5, 2014, *i.e.*, until November 1, 2014, but it could be terminated early if appropriate (or extended if necessary).

Requested Action:

Council passage of ORDINANCE #10-13/14.


City Manager

MEMORANDUM

To: City Council

From: Planning Board

Date: April 11, 2014

Subject: Request for Zoning Text Amendment – City of South Portland –
Moratorium Extension on the Development Proposals Involving the
Loading of Oil Sands/Tar Sands Products onto Marine Tank Vessels –
Meeting April 8, 2014

INTRODUCTION

The City of South Portland had requested the Planning Board consider a proposed amendment to the Chapter 27 Zoning ordinance relating to an extension regarding the moratorium on development proposals involving the loading of oil sands/tar sands products onto marine tank vessels docking in South Portland. The extension will add an additional one hundred and eighty (180) from May 5, 2014 to November 5, 2014. Per Ordinance Section 27-115(g), the Planning Board will, after the close of the public hearing, make a recommendation to the City Council regarding the proposed amendment. The City Council may act on the proposed amendment.

Legal advertisements regarding this request appeared in the Portland Press Herald on March 26, and 31, 2014 and a public notice was posted at the City Hall on March 26, 2014.

The submission was reviewed pursuant to South Portland Code of Ordinances Chapter 27 Zoning, Ordinance Section 27-115 Changes and amendments and Ordinance Section 27-1603 Moratorium declared.

ZONING RECOMMENDATION FROM THE PLANNING BOARD

By a vote of 4-0 (Giles and Schreiber absent; At-large seat vacant), the Planning Board recommends to approve the moratorium extension as written and make a finding that it is consistent with the Comprehensive Plan.

MINUTES FROM THE MEETING OF APRIL 8, 2014

Agenda Item #3. Zoning Text Amendment – Moratorium Extension Involving the Loading of Oil Sands Products onto Marine Tank Vessels Docking in South Portland – City of South Portland

PUBLIC HEARING

The City of South Portland is requesting the Planning Board to consider a proposed amendment to the Chapter 27 Zoning ordinance relating to an extension regarding the moratorium on development proposals involving the loading of oil sands/tar sands products onto marine tank vessels docking in South Portland. The extension will add an additional one hundred and eighty (180) days from May 5, 2014 to November 1, 2014. Per Ordinance Section 27-115(g), the Planning Board will, after the close of the public hearing make a recommendation to the City Council regarding the proposed amendment. The City Council may act on the proposed amendment.

T. Haeuser stated on March 17, 2014 the City Council gave the first reading to extend the moratorium. The first reading is extended to 6 months after May 5, 2014 time. The committee has a good start with informative workshop to the City Council.

Sally Daggett, Corporation Counsel discussed the reason we are here tonight is to decide whether or not to extend the moratorium. The extension would be from May 5, 2014 to November 1, 2014.

PUBLIC SESSION OPENED

Patricia Whyte, 7 Orchard Street stated she has observed the committee being very thorough in their work. They are doing an extraordinary job and would like the Planning Board to recommend an extension on the moratorium.

Bob Whyte, 7 Orchard Street, stated he urges the Planning Board to recommend the extension. This is a major issue to all citizens. The City has determined a course of action with a moratorium. The Draft Ordinance Committee has been very diligent in their work and we need to allow the process to play out.

Carol Silverman, 17 Churchill Road, stated she has attended the meetings and all types of resources are coming in. She is asking to respectfully extend the moratorium.

Ellen Frazier, 148 Breakwater Dr., stated she is concerned with the air and water quality in the community. It is up to people to prevent high levels of Benzene in our air.

Marla Saks, 68 George Street, stated she is a strong environmentalist and is opposed to tar sands. Please extend the moratorium to vote down tar sands.

Abby Hatoon, 12 Ledge Road stated it is important to extend the moratorium as more time is needed to evaluate and process the information.

Patricia Whyte, 7 Orchard Street, stated there is a website and a timeline is out. The beginnings of a draft should occur in June for public comment.

Bob Whyte, 7 Orchard Street stated they can only do this in public as deliberations are public and very transparent. Meetings are held 2-3x/week.

Planning Board members discussed frequency of meetings, how far along is the committee and is information still being gathered.

PUBLIC SESSION CLOSED

C. Hendry motioned to approve to recommend to the City Council approval of the zoning text amendment to Chapter 27 to add Article XVI Extension to the Moratorium on Development Proposals Involving the Loading of Oil Sands/Tar Sands Products onto Maine Tank Vessels Docking in South Portland, **K. Phillips** seconded 4-0 (Giles, Schreiber absent, District At-Large vacant).

RECOMMENDATION

Planning Board sends a positive recommendation to the City Council approval of the zoning text amendment to Chapter 27 to add Article XVI Extension to the Moratorium on Development Proposals Involving the Loading of Oil Sands/Tar Sands Products onto Marine Tank Vessels Docking in South Portland, based on the determination that amendments are consistent to the City of South Portland's Comprehensive Plan.

Attachments

1. City Council #10 13/14: Article XVI. Moratorium on Development Proposals Involving the Loading of Oil Sands/Tar Sands Products onto Marine Tank Vessels Docking in South Portland



CITY OF SOUTH PORTLAND

GERARD A. JALBERT
Mayor

JAMES H. GAILEY
City Manager

SUSAN M. MOONEY
City Clerk

SALLY J. DAGGETT
Jensen Baird Gardner & Henry

IN CITY COUNCIL

ORDINANCE #10-13/14

District One
MICHAEL R. POCK

District Two
PATRICIA A. SMITH

District Three
MELISSA E. LINSOTT

District Four
LINDA C. COHEN

District Five
GERARD A. JALBERT

At Large
MAXINE R. BEECHER

At Large
THOMAS E. BLAKE

THE COUNCIL of the City of South Portland hereby ordains that Chapter 27, "Zoning," of the "Code of Ordinances of the City of South Portland, Maine" be and hereby is amended by the enactment of a new Article XVI as follows (deletions are ~~struck through~~; additions are underlined):

CHAPTER 27

ZONING

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ARTICLE XVI. MORATORIUM ON DEVELOPMENT PROPOSALS INVOLVING THE LOADING OF OIL SANDS/TAR SANDS PRODUCTS ONTO MARINE TANK VESSELS DOCKING IN SOUTH PORTLAND

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Sec. 27-1603. Moratorium extended.

WHEREAS, a moratorium on development proposals involving the loading of oil sands/tar sands products onto marine tank vessels docking in South Portland was enacted by the City Council on December 16, 2013 for a period of one hundred and eighty (180) days from the date of applicability of this Article, i.e., until May 5, 2014; and

WHEREAS, the moratorium was necessary to provide the City with time to study its own ordinances to determine the implications of future proposed development proposals involving the loading of oil sands/tar sands products onto marine tank vessels docking in South Portland and to draft an amendment or amendments to the South Portland Code of Ordinances to address the concerns identified in Sec. 27-1601; and

WHEREAS, the problems giving rise to the need for the moratorium still exist; and

WHEREAS, the City and its Draft Ordinance Committee have been actively studying those problems since the date of the adoption of the moratorium and drafting amendments to the South Portland Code of Ordinances that will adequately address the same such that reasonable progress is being made to alleviate the problems giving rise to the need for the moratorium, but the City has not yet completed that work;

NOW, THEREFORE, all provisions of Secs. 27-1601 and 27-1602 are hereby extended for an additional one hundred and eighty (180) days from May 5, 2014 to November 1, 2014.

Fiscal Note: Less than \$1,000

Dated: March 17, 2014